

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BROCK QUALLS

Plaintiff,

v.

PREWETT ENTERPRISES, INC.

DBA B&P ENTERPRISES

Defendant.

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CIVIL NO. _____

NOTICE OF REMOVAL

Defendant, PREWETT ENTERPRISES, INC. DBA B&P ENTERPRISES, files this Notice of Removal, pursuant to 28 U.S.C. § 1441 and §1446, removing the above-captioned case to the United States District Court for the Southern District of Texas, Galveston Division. The grounds for removal are as follows:

STATEMENT OF GROUND FOR REMOVAL

1. On or around June 21, 2021, Plaintiff, Brock Qualls, filed a lawsuit in the County Court of Law No. 3 in Galveston County, Texas against his former employer Defendant, Prewett Enterprises, Inc. dba B&P Enterprises (“**B&P Enterprises**”) (“**Lawsuit**”). In the Lawsuit, Mr. Qualls plead he is owed approximately \$260,000.00 in commissions. Mr. Qualls plead he is an individual who resides in Harris County, Texas and B&P Enterprises is a foreign corporation. On July 2, 2021, Mr. Qualls served B&P Enterprises with a copy of the Lawsuit.

2. This Court has original jurisdiction over the Lawsuit pursuant to 28 U.S.C. § 1332. The Lawsuit may be removed to this Court because it is a civil action in which the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and diversity of citizenship exists between properly joined parties.

PROCEDURAL REQUIREMENTS FOR REMOVAL

3. B&P Enterprises provided written notice of the Notice of Removal to Mr. Qualls and his counsel. A copy of this Notice will be filed with the Clerk of the Court in Galveston County, Texas, where the Lawsuit was originally filed. A copy of all processes, pleadings, and orders is attached as Exhibit 1.

4. Removal is timely because B&P Enterprises was served the Lawsuit on July 2, 2021, which is less than thirty (30) days before this Notice of Removal. *See* Ex. 1, p. 4, Original Petition.

VENUE

5. The Lawsuit is pending in Galveston County, Texas, which is part of the Southern District of Texas, Galveston Division. 28 U.S.C. § 1441(a). B&P Enterprises intends to transfer this Lawsuit to the Northern District of Mississippi, Oxford Division.

PARTIES

6. According to his Original Petition, Mr. Qualls is a resident of Harris County, Texas.

7. B&P Enterprises is incorporated in Tennessee and its principal place of business is in Walls, Mississippi. A corporation is a citizen of the state in which they are incorporated and its principal place of business. 28 U.S.C. § 1332(c)(1). B&P Enterprises' principal place of business is in Mississippi where it directs, controls, and coordinates its activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

8. There is complete diversity of citizenship between Mr. Qualls and B&P Enterprises.

FACTUAL BACKGROUND AND JURISDICTIONAL BASIS FOR REMOVAL

9. B&P Enterprises specializes in providing railroad construction and maintenance services. On or around July 17, 2017, B&P Enterprises employed Mr. Qualls as a sales representative. Mr. Qualls was responsible for obtaining and maintaining customer accounts in the

railroad industry. Unfortunately, Mr. Qualls did not meet B&P's expectations and on or around October 23, 2019, B&P Enterprises terminated Mr. Qualls.

10. Mr. Qualls filed the Lawsuit alleging he is owed \$260,000.00 in commissions. Mr. Qualls asserted the following claims: breach of contract, quantum meruit, fraud, and a violation of the Sales Representative Statute in Sec. 54.001 of the Texas Business and Commerce Code. Mr. Qualls seeks to recover at least \$260,000.00 in commissions, treble damages, punitive damages, pre-judgment and post-judgment interest, court costs, and attorneys' fees.

A. It is facially apparent that the amount in controversy exceeds \$75,000.00.

11. A defendant may rely on an estimate of damages calculated from the allegations in a complaint 28 U.S.C. § 1332(c)(1). In Mr. Qualls' Petition, he contends the actual damages total at least \$260,000.00.¹ See Ex. 1. "The sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy." 28 U.S.C. § 1446(c)(2).

12. Mr. Qualls expressly seeks a sum of damages that exceed the \$75,000.00 threshold. Thus, B&P Enterprises has met its burden in establishing that the amount in controversy requirement is met.

B. There is diversity of citizenship between the parties.

13. The parties are diverse because Mr. Qualls' citizenship is Texas and B&P Enterprises is a citizen of Mississippi and Tennessee. Mr. Qualls plead that he is an individual who resides in Harris County, Texas. The Fifth Circuit has held that " 'reside' has been interpreted to mean more than to be temporary living in the state; it means to be 'domiciled' there." *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996). Based on Mr. Qualls' pleading, he is domiciled in Texas and thus, he is a citizen of Texas.

¹ Mr. Qualls filed his Original Petition in the County Court at Law No. 3. Mr. Qualls seeks to recover at least \$260,000.00 which exceeds the jurisdictional limit of the County Court at Law. TEX. GOV'T CODE § 25.0003(c)(1).

14. B&P Enterprise is a citizen of Tennessee and Mississippi. A corporation is considered a citizen of (1) the state where it is incorporated and (2) its principal place of business. 28 U.S.C. § 1332(c)(1). A corporation's state of incorporation is the state where a corporation formed its corporate status. B&P Enterprises formed its corporate status in Tennessee. A corporation's principal place of business is where its officers "direct, control, and coordinate" its activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010). B&P Enterprises' headquarters is located in Walls, Mississippi, its directors are located in Walls, Mississippi, and it operates out of the Walls, Mississippi office. Thus, B&P Enterprises is a citizen of both Tennessee and Mississippi.

15. Accordingly, complete diversity exists between Mr. Qualls and B&P Enterprises.

RELIEF REQUESTED

Defendant, PREWETT ENTERPRISES, INC. DBA B&P ENTERPRISES, respectfully request that this Court find that the Lawsuit now pending in the County Court of Law No. 3 in Galveston County, Texas be removed to this honorable court.

Respectfully submitted,

PECKAR & ABRAMSON, P.C.

By: /s/ Timothy Matheny

TIMOTHY MATHENY

State Bar No. 24000258

S.D. Tex. No. 25061

tmatheny@pecklaw.com

CRYSTAL T. DANG

State Bar No. 24097566

S.D. Tex. 2789486

cdang@pecklaw.com

3050 Post Oak Blvd., Ste. 500

Houston, TX 77056

Telephone: 713-568-1500

Facsimile: 713-568-1490

**ATTORNEYS FOR DEFENDANT
PREWETT ENTERPRISES, INC. DBA
B&P ENTERPRISES**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure on this the on July 26, 2021.

Via E-Service

Christopher D. Bertini
Higdon Lawyers
4900 Fournace Place, Suite 460
Bellaire, Texas 77401
chris@higdonlawyers.com

/s/ Crystal T. Dang

Crystal T. Dang